

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

TRUE THE VOTE, JANE COLN, BRANDIE CORRERO,
CHAD HIGDON, JENNIFER HIGDON, GENE HOPKINS,
FREDERICK LEE JENKINS, MARY JENKINS, TAVISH
KELLY, DONNA KNEZEVICH, JOSEPH KNEZEVICH,
DORIS LEE, LAUREN LYNCH, NORMA MACKEY, ROY
NICHOLSON, MARK PATRICK, JULIE PATRICK,
PAUL PATRICK, DAVID PHILLEY, GRANT SOWELL,
SYBIL TRIBBLE, LAURA VANOVERSCHELDE, AND
ELAINE VECHORIK

PLAINTIFFS

v.

CIVIL ACTION NUMBER 3:14CV532-NFA

THE HONORABLE DELBERT HOSEMAN, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF STATE FOR
THE STATE OF MISSISSIPPI, THE REPUBLICAN PARTY
OF MISSISSIPPI, COPIAH COUNTY, MISSISSIPPI
ELECTION COMMISSION, HINDS COUNTY,
MISSISSIPPI ELECTION COMMISSION, JEFFERSON
DAVIS COUNTY, MISSISSIPPI ELECTION
COMMISSION, LAUDERDALE COUNTY,
MISSISSIPPI ELECTION COMMISSION, LEAKE
COUNTY, MISSISSIPPI ELECTION COMMISSION,
MADISON COUNTY, MISSISSIPPI ELECTION
COMMISSION, RANKIN COUNTY, MISSISSIPPI
ELECTION COMMISSION, SIMPSON COUNTY,
MISSISSIPPI ELECTION COMMISSION, AND
YAZOO COUNTY, MISSISSIPPI ELECTION COMMISSION

DEFENDANTS

EVIDENTIARY HEARING

BEFORE THE HONORABLE NANCY F. ATLAS
UNITED STATES DISTRICT JUDGE
JULY 24TH, 2014
JACKSON, MISSISSIPPI

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR
Mississippi CSR #1253

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EXHIBIT 1

APPEARANCES

FOR THE PLAINTIFFS:

MR. JAMES EDWIN TRAINOR III
MR. JOSEPH M. NIXON
MS. KELLY HUNSAKER LEONARD
MS. KRISTEN W. MCDANALD
MR. LLOYD EADES HOGUE

FOR THE HONORABLE DELBERT HOSEMAN:

MR. HAROLD EDWARD PIZZETTA, III
MR. JUSTIN L. MATHENY

FOR THE REPUBLICAN PARTY:

MR. MICHAEL B. WALLACE
MR. THORNTON RUSSELL NOBILE

FOR COPIAH COUNTY, MISSISSIPPI ELECTION COMMISSION:

MS. ELISE BERRY MUNN

FOR HINDS COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. PIETER TEEUWISSEN
MR. ANTHONY R. SIMON

FOR JEFFERSON DAVIS COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. ROBERT E. SANDERS
MR. JOHN WESLEY DAUGHDRILL, JR.

FOR LAUDERDALE COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. LEE THAGGARD

FOR LEAKE COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. JEFFREY T. WEBB

FOR MADISON COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. MIKE ESPY
MR. SPENCE FLATGARD

FOR RANKIN COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. CRAIG SLAY

FOR SIMPSON COUNTY, MISSISSIPPI ELECTION COMMISSION:

MR. DANNY WELCH

1 A. Yes, sir. We sent -- I sent letters to all four via e-mail
2 and fax to let them know that we'd be glad to talk with them or
3 work with them or, you know, anything.

4 Q. You were offering your services of True the Vote to each of
5 the campaigns in order to help them make sure that the vote was
6 valid?

7 A. Well, or just to -- we can't work directly with the
8 campaign, but just to let them know that we were there and, you
9 know, there would be -- there are interested people who would
10 be willing to work with them if that was, you know, something
11 that those parties would be interested in.

12 Q. As part of your efforts on True the Vote, did you ask for
13 records prior to the June 26th GOP runoff?

14 A. Let me think about that. Well, we have the state's voter
15 files, yes. So we did have those records already in place.
16 And we were trying to determine what else we would be able
17 to -- to look at.

18 Q. Did you go to three counties?

19 A. Yes.

20 Q. Which counties?

21 A. Well, I went to Hinds and to Rankin and to Panola.

22 Q. And what did you ask of Hinds County?

23 A. Well, in Hinds County I asked for the -- I'd like to see --
24 I asked if I could see the absentee ballot applications and
25 envelopes.

1 THE COURT: What was the last county you went to?
2 Hinds, Rankin and what?

3 MR. NIXON: Panola.

4 A. Panola.

5 THE COURT: Panola?

6 MR. NIXON: P-I-N --

7 MR. SANDERS: No, P-A-N-O-L-A.

8 MR. NIXON: I'll leave it to (indicating) for the
9 spelling.

10 THE COURT: Okay. Thank you.

11 BY MR. NIXON:

12 Q. Did you also go -- well, did you make any request of Rankin
13 County?

14 A. Yes, a similar request, just asked to see absentee ballot
15 applications and envelopes.

16 Q. Was your request granted or denied?

17 A. Denied.

18 Q. In Hinds County, was it granted or denied?

19 A. Denied.

20 Q. And what request, if any, did you make of Panola County?

21 A. In Panola, I asked to see the report of Republican voters
22 in the primary, an electronic version, sort of like the poll
23 book, if you will, without the signatures, but just the voting
24 record. And that was provided via e-mail.

25 Q. Okay. And it was provided digitally to you?

1 pursuant to federal statute, would the advice from the
2 Secretary of State's Office be to produce the information with
3 the birth dates?

4 A. It would depend on the particular information sought.

5 Q. And what would be the difference?

6 A. Well, not all information and documentation related to the
7 entire election process is subject to the National Voter
8 Registration Act.

9 Q. Which documents do you believe are not subject to the
10 National Voter Registration Act?

11 A. There's quite a number of documents. You've mentioned --
12 poll books are not subject to the National Voters Registration
13 Act.

14 Q. Are poll books relevant to maintaining accurate voter
15 rolls?

16 A. No.

17 Q. What is, in your opinion, a poll book?

18 A. According to law, a poll book is a list of those voters who
19 are eligible to vote in a particular election who are all
20 active, on active status.

21 Q. And you do not believe that the -- that the active voter
22 registration list is subject to the NVRA?

23 A. That's two different things. I didn't say an active voter
24 registration list. We talked about the poll books, which
25 represents a list of active voters who are eligible to vote in

1 a given precinct on election day. The voter roll is something
2 different. The voter roll is a complete list of all
3 Mississippi voters and all status categories.

4 Q. Would the voter roll include active voters?

5 A. Yes.

6 Q. Would the voter roll include any kind of designation of who
7 is an active voter and who is a suspense voter?

8 A. There is no such thing as a suspense voter. It would
9 indicate voters in different statuses. We have five statuses:
10 active, inactive, purged, rejected and pending.

11 THE COURT: Would it do that with the designation?

12 A. Yes, ma'am.

13 THE COURT: In other words, by each name it would
14 reflect this person's active, the next person is inactive, the
15 third person is suspended, or whatever?

16 A. It would indicate the status of each voter, yes, ma'am.

17 BY MR. NIXON:

18 Q. What is the difference between an active and an inactive
19 voter?

20 A. An active voter is eligible to cast a ballot -- a regular
21 ballot in an election. An inactive voter is one who has been
22 moved to that status by virtue of documentation or information
23 received that indicates a change of address outside the county
24 or outside the state, pursuant to which they are sent a
25 confirmation card pursuant to the NVRA at that time marked

1 "inactive."

2 Q. Okay. So for the court's edification, is -- you would mail
3 a voter registration card to an individual. And they are not
4 allowed to be forwarded by law. Right?

5 A. Well, again, for clarification, we wouldn't mail anything.
6 Our counties administer elections. So our county election
7 commissioners would identify their voters, and the county
8 election commissioners would cause a confirmation card to be
9 sent, you're correct, by non-forwardable mail.

10 Q. Okay. And so when a -- and when a voter registration card
11 is then returned back to the county, then that person is moved
12 from active to inactive status?

13 A. Incorrect.

14 Q. Okay. Explain how that works.

15 A. When the confirmation card is sent, the voter's moved from
16 an active to an inactive status. In the rare instance a voter
17 returns that confirmation card to the county election
18 commission completed, that voter is moved back to an active
19 status and their registration is updated.

20 THE COURT: So when you send the card, just send a
21 card to anyone who's previously on the voter roll -- not you --
22 when the county sends it, the voter is deemed inactive until
23 the card is received or something is received back?

24 A. When we have -- when the counties have information that
25 indicate a change of address, a move outside the county or the

1 state, so National Change of Address information, the counties
2 will send the confirmation card, and at that time, yes, marks
3 the voter in an inactive status.

4 The card -- we would like for voters to complete that card
5 and return it to the counties. And if the voter does take that
6 action, the information from the card is put into the State
7 Election Management System, and the voter's returned to an
8 active status with updated information.

9 If that card is not returned being completed by the voter,
10 it's just returned to the county as unable to locate, not
11 deliverable, that voter remains in an inactive status for the
12 next two federal general elections, after which time if they do
13 not vote, they can be removed or purged from the voter roll, or
14 in our case moved to a purged status.

15 BY MR. NIXON:

16 Q. Let's take the situation where a voter registration card is
17 mailed. It is returned to the county --

18 A. Did you say registration card?

19 Q. Well, a voter ID card. What is used in the State of
20 Mississippi to have -- the card that is mailed to the voters?

21 A. When you register to vote? Is that what you're asking?

22 Q. Yes.

23 A. When a person registers, they are sent a voter registration
24 card.

25 Q. What is the name of the card that we were talking -- we

1 were just now talking about?

2 A. A confirmation card.

3 Q. Confirmation card. A confirmation card -- is a
4 confirmation card mailed to every voter each year?

5 A. No.

6 Q. Is it -- how often is a confirmation card mailed to a
7 voter?

8 A. Only when there is a trigger -- we refer to it as a trigger
9 under the National Voter Registration Act. So it's some
10 information, reliable information. I used the National Change
11 of Address database which we -- all states participate in.
12 When a county receives reliable information that a voter on its
13 roll has moved outside the county or outside the state, that
14 trigger prompts the county to send a confirmation card.

15 Q. You use a term National Change of Address database?

16 A. Yes, NCOA.

17 Q. Who maintains that?

18 A. I'm assuming it's the U.S. Post Office.

19 Q. Okay. Are birth dates provided on that database, or do you
20 know?

21 A. I don't know.

22 Q. Okay. All right. So when you -- when you find out that
23 somebody's moved, you send them a confirmation card. If -- if
24 they return it to the county, they're maintained on active. If
25 it's not returned, they're moved to inactive.

1 A. Pending, purged and rejected.

2 Q. What is pending?

3 A. Pending is a status for a voter who submits a mail-in voter
4 registration application. And by statute the clerks are
5 afforded a certain amount of time to obtain additional
6 information should they not have received a complete
7 application. And people are also put in a pending status to
8 ensure that the address provided with the registration was the
9 correct address to allow for the time for their card to be sent
10 to them, their registration card.

11 Q. Are pending voters listed in the poll books?

12 A. No.

13 Q. What's the next designation?

14 A. Purged.

15 Q. Purged. What does that mean?

16 A. Those are voters who are removed from the voter roll.
17 They're placed in a purged status, but they're not ever removed
18 but are put in a purged status. It's for voters who should no
19 longer be eligible to vote by reason of death, adjudication of
20 incompetence, moved, voluntary requests.

21 Q. Felons?

22 A. Not all felons. Conviction of a disenfranchising crime in
23 the state of Mississippi.

24 THE COURT: I couldn't understand one word you said.

25 A. Conviction of a disenfranchising crime in the state of

1 Mississippi.

2 THE COURT: Thank you.

3 BY MR. NIXON:

4 Q. Those voters are not included on the poll books either?

5 A. They're purged status.

6 Q. And then what's the last?

7 A. Rejected.

8 Q. And, obviously, those aren't on the poll book either.

9 A. No.

10 Q. But they are on the voter rolls?

11 A. Yes.

12 Q. Okay.

13 THE COURT: Can I just go back to the poll books for a
14 minute, if you don't mind. Tell us again, the poll books, what
15 exactly do they contain?

16 A. By statute the poll book will contain the name of the
17 voter, the address, the date of birth, the voter registration
18 number. And then it will have columns for each applicable
19 election. So with this past election, you had a column for the
20 June 3rd primary and a column for the June 24 primary runoff.
21 And then there's a bar code at the far right.

22 THE COURT: And the poll books contain all active
23 voters? Do they contain --

24 A. Correct.

25 THE COURT: -- inactive?

1 A. No.

2 THE COURT: And, obviously, they don't contain purged
3 voters or rejected voters.

4 A. They do not.

5 THE COURT: And what was the third category,
6 suspended?

7 A. Pending.

8 THE COURT: Pending. What's "pending" mean?

9 A. Pending is -- a simpler way to put it, those people who
10 have registered within the 30 days before the election, too
11 soon.

12 THE COURT: Too recently.

13 A. Too recently to be able to vote in the next election.

14 THE COURT: All right. And the poll books do not
15 contain any of those three categories of people?

16 A. Only active. Active voters only.

17 THE COURT: And what about the inactive? If an
18 inactive comes to vote, then what?

19 A. If an inactive voter comes to vote, their name is not in
20 the poll book. So they will be presented with a paper ballot
21 and allowed to vote an affidavit or provisional ballot, which
22 requires the completion of an affidavit ballot envelope, voting
23 by paper, the ballot's folded, put in the envelope, sealed, and
24 then put in the ballot box to be counted and evaluated after
25 the election by the election officials.

1 THE COURT: And the election officials are county
2 employees?

3 A. I'm sorry?

4 THE COURT: Are the election officials to whom you
5 just referred county employees?

6 A. Election commissioners are elected county officials.

7 THE COURT: Okay. So what do they look at?

8 A. They will look at the -- at the voter roll as a whole to
9 determine whether or not those voters should have been on the
10 voter roll or on the poll book. And they will determine if the
11 voter has moved within the county and they're still eligible.
12 That means they can still vote as long as they voted in their
13 new precinct. They look at different -- different things,
14 given the reason -- there's other reasons to cast an affidavit
15 ballot.

16 THE COURT: What about the affidavit? What does it
17 contain?

18 A. The affidavit itself is on the envelope. And all it asks
19 is for the name of the voter, their date of birth, the last
20 four of their Social, telephone numbers, old physical address,
21 new physical address, old mailing address, new mailing address,
22 which is all optional. And then they -- the affidavit -- they
23 have to state the reason why they believe they are being asked
24 to cast an affidavit ballot.

25 THE COURT: Why they believe they're being asked?

1 give us the technical name, to the extent there is one, under
2 state law or practice in Mississippi.

3 A. Mississippi allows for two types of registration for a
4 normal, average person, which is in person in the circuit
5 clerk's office or by a mail-in registration application. Those
6 paper applications are sent to the circuit clerk of the county
7 of residence of the voter. That information is entered into
8 the Statewide Election Management System, including scanning of
9 the actual registration application. Once the information is
10 put into SEMS, which is the statewide voter roll, all voters
11 from all 82 counties are in one central location.

12 THE COURT: Scanned?

13 A. Scanned registration applications. They will also scan any
14 other documentation pertaining to that voter over the course of
15 that voter's history. And that's -- that's voter registration.

16 BY MR. NIXON:

17 Q. What about the federal postcard application?

18 A. Military overseas can register to vote by the federal
19 postcard. Again, it's a paper application, or if it's e-mailed
20 or faxed. It's retained by the circuit clerk of that voter's
21 residence. That information, again, is entered into SEMS. It
22 creates a voter record for that voter. Their information is
23 scanned, the document's available, and they become a part of
24 the statewide voter roll.

25 Q. Do you know why the federal postcard application ballot

1 requires -- is subject to open disclosures and the others are
2 not?

3 A. No.

4 Q. All right. Let's get back to the registration process.

5 A. Well, I never said others were not. You never asked about
6 registration applications.

7 Q. Are registration applications subject to open records under
8 the federal Voter Registration Act?

9 A. Everything -- everything these clerks' offices and our
10 office has is subject to public disclosure. The issue is what
11 may be redacted.

12 Q. Okay. All right. Well, we've already decided that --
13 you've already disclosed that the federal postcard application,
14 which includes birth dates, is not subject to redaction.

15 A. And neither are Mississippi state registration
16 applications.

17 Q. So the registration application, which includes birth
18 dates, is not subject to birth date redaction?

19 A. It may include a birth date, yes.

20 Q. And it's not subject to a redaction?

21 A. Not under the NVRA.

22 Q. So if we can obtain the birth date application -- the voter
23 application which includes the voter's birth date, that
24 information is uploaded through SEMS and put on a voter roll
25 and includes a voter's birth date, why is a person under the

1 redactions, unless they're actually --

2 THE COURT: Well, there are black marks. I see your
3 point.

4 MR. NIXON: Yes. So I don't know what's been
5 redacted.

6 THE COURT: Well, let's find out what the offer is.
7 What's the offer?

8 MR. PIZZETTA: We have -- just to get the court
9 finally to see what a poll book is, and I think Ms. Turner will
10 be able to explain what it is that is redacted underneath. I
11 think it will --

12 THE COURT: Okay. I'm going to overrule your
13 objection.

14 (EXHIBITS D-5 AND D-6 MARKED)

15 BY MR. PIZZETTA:

16 Q. Ms. Turner, looking at D-5, can you identify that for us?
17 Do you see at the top what county it comes from there?

18 A. Yes, I do. It's -- these are poll books generated by
19 Jefferson Davis County. One is the Republican poll book and
20 the other is the Democratic poll book.

21 Q. You've seen poll books before.

22 A. Yes.

23 Q. You've seen unredacted poll books before.

24 A. Yes.

25 Q. Tell the court what it is that is redacted there on D-5 and

1 A. You do not have a voter roll.

2 THE COURT: So we need a copy of that. Just a page.
3 Redacted is fine. We've had testimony about it. I know what
4 it is, but I'd like a sample. Okay. Anybody have any other
5 samples?

6 MR. WALLACE: One technical question, your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. WALLACE:

9 Q. You mentioned that you keep -- or that the county clerks
10 keep certain documents for 22 months. Do you know what federal
11 statute requires that?

12 A. Not off the top of my head.

13 Q. Okay. You don't know whether it's the Voter Registration
14 Act or some other statute?

15 A. I'd have to look and double check.

16 Q. Thank you.

17 MR. WALLACE: Thank you, your Honor.

18 THE COURT: Okay. We will ask you supply that.

19 MR. NIXON: I have one short follow-up, if I may.

20 THE COURT: Okay.

21 **FURTHER DIRECT EXAMINATION**

22 BY MR. NIXON:

23 Q. We really didn't talk about a runoff. We talked about the
24 primary and each of these (indicating) stamped. In the runoff
25 do they -- do the parties then switch books -- the poll books

1 so that they know who voted in the other political party's
2 primary?

3 A. That is not the recommended or trained proper procedure.

4 Q. What is the recommended or trained proper procedure?

5 A. What has been trained or taught is to actually print a
6 VR-28 report which lists all particular voters who voted in
7 that election and to provide that list to the poll workers.

8 Q. Who recommends creating the VR-28?

9 A. Our office trains the election commissioners and executive
10 committees, and then they pass it along to their poll workers.

11 Q. Okay. So you instruct the counties to do that. Do the
12 counties -- are they required by Mississippi statute to do
13 that?

14 A. No. There is no procedure set by statute.

15 Q. Okay. Some counties may create a VR-28 and some counties
16 just may switch poll books?

17 A. They may.

18 THE COURT: Switch what?

19 MR. NIXON: They switch the books. The Democrats
20 voted here and the Republicans voted here, on the right and the
21 left, during the primary. So in order to know who voted in the
22 other person's primary, the parties switch books. So when you
23 vote in the Republican Party primary runoff --

24 THE COURT: Oh, the Republicans can check --

25 MR. NIXON: -- you're looking at the Democrat polling

1 book to see if you voted in the Democrat Party.

2 THE COURT: What's wrong with doing that?

3 MR. NIXON: It's -- I don't know. I just was
4 asking --

5 THE COURT: Sounds like a great idea.

6 MR. NIXON: Yeah, I thought so too. It's just -- some
7 counties do it. I just wanted to make sure we understood the
8 process.

9 THE COURT: Okay. But I think your point is that
10 there's no new polling record or anything.

11 A. There's no new poll book run. And we only had a Democratic
12 runoff in a few counties, so some Republicans were -- had the
13 benefit of the Democratic poll book because it wasn't in use.

14 THE COURT: Thank you.

15 MR. NIXON: Thank you.

16 THE COURT: Anything else? You are finally --

17 MR. SLAY: One.

18 THE COURT: Oh, oh, oh.

19 MR. SLAY: And this may be totally off base.

20 **CROSS-EXAMINATION**

21 BY MR. SLAY:

22 Q. Kim, Craig Slay, Rankin County. We've talked.

23 A. Yeah. Hey, Craig.

24 Q. Good to see you. What is your understanding of -- under
25 Mississippi law, if you know, what is the -- what is the

1 MR. SANDERS: Oh, okay.

2 THE COURT: -- I have the cover letter.

3 MR. SANDERS: But the memorandum is just one page.

4 Right?

5 THE COURT: Yes.

6 MS. McDANALD: I'm happy to admit it all.

7 MR. WALLACE: What's the question?

8 THE COURT: No. For the purposes of the questioning,
9 it was one page, and that's what I'm going to receive. That's
10 the only relevance. The rest of it isn't, at least at this
11 point. The foundation was laid on the second page.

12 MS. McDANALD: Right.

13 THE COURT: So that's what I'm receiving. All right.
14 Anything further for this witness? Plaintiff?

15 MS. McDANALD: Brief redirect.

16 **REDIRECT EXAMINATION**

17 BY MS. McDANALD:

18 Q. Earlier you testified that there was a \$100 charge for a CD
19 of voter registering information from Leake County. Why did
20 that seem high to you?

21 A. I work in California, as you know, in the election area.
22 We recently purchased, for example, 18 million voting records,
23 which is the entire state of California, with expanded database
24 and with voting history on a disk for \$30.

25 Q. And I believe there are not 18 million residents in

1 Mississippi.

2 A. Not in Leake County.

3 Q. And not in Leake County.

4 A. No.

5 Q. Also on cross-examination you testified how you were told
6 on a Tuesday to come back on Monday by Covington County Circuit
7 Clerk.

8 A. Yes.

9 Q. Did you also tell the circuit clerk that you live in
10 California?

11 A. Yes. When we introduced ourselves, we told her we were
12 from California.

13 MS. McDANALD: No further questions.

14 THE COURT: Okay. Anything further? Okay. Thank
15 you, ma'am. You may step down.

16 A. Thank you, your Honor.

17 MS. McDANALD: Plaintiffs would like to call Julie
18 Patrick.

19 MR. SANDERS: And, your Honor, I understand the
20 court's previous rulings on this issue, but the declaration
21 Ms. Patrick has given indicates she wants to talk about Tunica
22 County. Just for the record, we would object to that.

23 THE COURT: Forgive me.

24 MR. SANDERS: I appreciate the court's ruling on this
25 issue --

1 CERTIFICATE OF REPORTER

2
3 I, MARY VIRGINIA "Gina" MORRIS, Official Court
4 Reporter, United States District Court, Southern District of
5 Mississippi, do hereby certify that the above and foregoing
6 pages contain a full, true and correct transcript of the
7 proceedings had in the aforementioned case at the time and
8 place indicated, which proceedings were recorded by me to
9 the best of my skill and ability.

10 I certify that the transcript fees and format
11 comply with those prescribed by the Court and Judicial
12 Conference of the United States.

13 This the 28th day of July, 2014.

14
15 s/ Gina Morris
16 U.S. DISTRICT COURT REPORTER
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